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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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12 SEAVON PIERCE, ) No. EDCV 10-820-VAP(CW)  
13 )  
14 Petitioner, ) ORDER OF DISMISSAL  
15 )  
16 v. )  
17 HEDGEPEETH (WARDEN), )  
18 )  
19 Respondent. )  
20 \_\_\_\_\_ )  
21

22 The present habeas corpus petition was filed on June 3, 2010.  
23 The pro se petitioner is a prisoner in state custody pursuant to a  
24 2006 conviction in California Superior Court, Riverside County, Case  
25 No. SWF 002212. The validity of this conviction (and sentence) is the  
26 subject of a habeas petition filed by Petitioner under 28 U.S.C.  
27 § 2254 which is still pending in this court as Pierce v. Sullivan, No.  
28 EDCV 09-310-VAP(CW). The present petition is the third filed by  
Petitioner in this court which challenges the same conviction and  
sentence.<sup>1</sup>

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<sup>1</sup> On April 29, 2010, judgment was entered dismissing the second  
(continued...)

**DISCUSSION**

A federal district court may entertain a habeas petition on behalf of a person who is in custody under a state court judgment and in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. 2254(a). The court need neither grant the writ nor order a return if it appears from the petition that the petitioner is not entitled to relief. 28 U.S.C. § 2243; Rule 4, Rules Governing Section 2254 Cases, 28 foll. § 2254. A federal habeas petitioner is required to "specify all the grounds for relief which are available to the petitioner" and should address the judgment or judgments of a single state court. Rule 2(c)-(d), 28 foll. § 2254. If a petition does not substantially comply with Rule 2 it may be rejected with a statement of the reason for its rejection. Rule 2(e), 28 foll. § 2254. A petition may be amended or supplemented as provided by rule. 28 U.S.C. 2242; Rule 11, 28 foll. § 2254; Rule 15, Federal Rules of Civil Procedure.

Under the applicable rules and statutes, Petitioner should have included all of his claims for federal habeas relief from the same state conviction in his prior and pending petition. There is no indication that Petitioner has any claims, cognizable on federal habeas review, that could be raised in the present action but not in

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<sup>1</sup> (...continued)  
petition filed by Petitioner challenging this conviction, Pierce v. Hedgpeth (Warden), Case No. EDCV 10-474-VAP (CW), as duplicative, without prejudice to Petitioner filing a motion for leave to amend in Case No. EDCV 09-310. The Ninth Circuit denied Petitioner a certificate of appealability on June 15, 2011. To date, Petitioner has not filed a motion for leave to amend (or supplement) his Petition in Case No. EDCV 09-310.

1 No. EDCV 09-310. Rather than filing the present new petition,  
2 Petitioner should have filed a motion for leave to amend in No. EDCV  
3 09-310. There is no evident reason why he cannot now move to amend  
4 the prior petition in order to include the new claims, provided that  
5 he has met the other requirements for presenting habeas claims in  
6 federal court, such as the requirement of first exhausting state court  
7 remedies, see 28 U.S.C. § 2254(b)-(c), and the statute of limitations  
8 at 28 U.S.C. § 2244(d). If Petitioner is able to amend the pending  
9 petition in Case No. EDCV 09-310 to include any new claims from the  
10 present petition, the new claims would receive the same consideration  
11 that they would if presented in a separate action.

12 The court has discretion to dismiss a pleading "that merely  
13 repeats pending or previously litigated claims." Cato v. United  
14 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). The present petition  
15 can, at most, only repeat claims that have been or should have been  
16 raised in Petitioner's pending, previously filed action. Therefore,  
17 the present petition should be summarily dismissed.

18 If Petitioner wants to litigate his new claims, he should file,  
19 in Case NO. EDCV 09-310, a motion for leave to amend in which he  
20 clearly identifies the new claims he seeks to add, and shows that they  
21 are exhausted and timely.  
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**ORDERS:**

It is therefore **ORDERED** that judgment be entered dismissing this action as duplicating Case No. EDCV 09-310. Dismissal is without prejudice to filing a motion for leave to amend in No. EDCV 09-310.

DATED: September 13, 2011



VIRGINIA A. PHILLIPS  
United States District Judge

Presented by:  
Dated: September 12, 2011



CARLA M. WOHRLE  
United States Magistrate Judge